

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 8, 2009, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** Ray Dwyer  
Robert Bartholomew  
Walter Schmidt  
Tom Day  
Nancy Bonniwell

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Nancy Bonniwell

**OTHERS PRESENT:** Peggy Tilley, Senior Land Use Specialist  
Jennifer Bauman, BA09:026, attorney for neighbor  
Jeff Baum, BA09:025, co-owner  
Scott & Diane Stacey, BA09:026, owners  
Matt Brown, BA09:025, owner  
Andy Kraft, BA09:025, neighbor  
Bill & Heather Schoff, BA09:023, owners  
David Hoffman, BA09:026, agent  
Janet Cox, BA09:024, daughter of owner  
Gary Kubehl, BA09:024, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I make a motion to approve the Summary of the Meeting of June 10, 2009.*

The motion was seconded by Mr. Day and carried unanimously.

**NEW BUSINESS:**

**BA09:023 BILL AND HEATHER SCHOFF:**

Mr. Schmidt                      *I make a motion to deny the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report. Mr. Schmidt noted that the petitioners have not demonstrated a hardship and that the granting of a road setback variance would set a precedent in the neighborhood.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the road setback requirements of the Ordinance.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The building envelope on the property is limited due to the property being bounded on three sides by roads and the location of the septic system. However, the property is currently being used for a permitted purpose. The property has a two-story single-family residence with an attached garage. The personal desire of the property owner for additional storage area should not be considered when determining if a variance should be granted. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested road setback variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The approval of this request would not be within the purpose and intent of the Ordinance.

**BA09:024 GARY KUBEHL:**

Mr. Schmidt

*I make a motion to **approve** all of the variances requested, for the reasons stated in the Staff Report as modified below, and with the following modification to the conditions stated in the Staff Report:*

*Condition No. 2 shall be revised to read as follows: "The total floor area on the property shall not exceed 2,262.1 sq. ft."*

*The modified reasons are as follows:*

*However, the property does not currently have a garage. It is a very non-conforming lot and a non-conforming structure. However, the existing structure appears to be located in the most appropriate place on the property. The subject property is located two houses down from the end of a dead end road. There is limited traffic on this road and to require the relocation of the residence to accommodate the construction of a reasonably sized garage would be unnecessarily burdensome on the property owner. Therefore, the approval of the request for variances will be with the purpose and intent of the Ordinance. Due to the small lot size, no structure could be constructed on the property without some variances. Accordingly, it is appropriate to grant minor relief from the requirements of the Ordinance to allow a reasonably sized garage addition to be*

*constructed on the property. Furthermore, the granting of the variances is appropriate because of the uniqueness and substandard size of the lot being reduced in size when Elm Street was established.*

The motion was seconded by Mr. Bartholomew and carried with three yes votes. Mr. Day and Mr. Dwyer voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the floor area ratio requirements of the Ordinance but **approval** of the request for variances from the road setback, offset, open space, and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance, subject to the following conditions:

1. The existing poly-structure shed shall be removed from the property prior to the issuance of a Zoning Permit for an addition to the residence.
2. The total floor area ratio on the property shall not exceed 19.5%.
3. The addition must be located at least 5 ft. from the side lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
4. The addition must be located at least 10 ft. from the 50 ft. wide established road right-of-way of Elm Street and outside of any dedicated road right-of-way unless that area of the road is vacated by the Town of Summit and deeded to the subject property.
5. Prior to the issuance of a Zoning Permit, a complete detailed set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures, and the staked-out location of the addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey must also indicate the location of the platted road right-of-way and the total lot size.
7. A revised detailed cost estimate prepared by a contractor, including the costs of materials and labor, must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

8. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading and drainage plan may be combined with the survey required in condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The property is a very non-conforming lot. The petitioner would be allowed to construct a reasonably sized one-story garage addition to the residence without the need for a floor area ratio variance. The law requires that the petitioner demonstrate a hardship. It is important to note that the physical limitations of the property and not the personal circumstances or desires of the property owner should be used to determine whether variances should be granted. The desires of the property owner for additional bedrooms to accommodate a growing family should not be considered when determining if variances should be granted. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested floor area ratio variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

However, the property does not currently have a garage. It is a very non-conforming lot and a non-conforming structure. However, the existing structure appears to be located in the most appropriate place on the property. The subject property is located two houses down from the end of a dead end road. There is limited traffic on this road and to require the relocation of the residence to accommodate the construction of a reasonably sized garage would be unnecessarily burdensome on the property owner. Therefore, the approval of the request for variances from the road setback and offset requirements of the Ordinance will be with the purpose and intent of the Ordinance. Due to the small lot size, no structure could be constructed on the property without some variances. Accordingly, it is appropriate to grant minor relief from the requirements of the Ordinance to allow a reasonably sized garage addition to be constructed on the property.

**BA09:025 MATT BROWN:**

*After some discussion, the petitioner and the Board agreed to adjourn the public hearing until the August 12, 2009, Board of Adjustment meeting to allow them time to provide an updated Plat of Survey showing the location of the 100-year floodplain.*

The Planning and Zoning Division staff recommended that the hearing on this matter be **adjourned** to the August 12, 2009, Board of Adjustment Meeting to allow the petitioner's time to submit an updated Plat of Survey showing the location of the 100-year floodplain.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

As noted above, the location of the 100-year floodplain on this property is unknown. However, based on Waukesha County mapping, it appears that a significant amount of the property may be located within the floodplain. The location of the floodplain is critical to determine an appropriate location for the construction of a new residence.

**BA09:026 SCOTT AND DIANE STACEY(OWNERS) DAVID HOFFMAN (AGENT):**

Mr. Day *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the floor area ratio and remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance, and **approval** of the request for a special exception from the offset requirements subject to the following conditions:

1. No increase in the existing floor area on the property is permitted. The screen porch shall be removed to accommodate the additional square footage proposed in the second floor addition.
2. The proposed addition shall comply with the height requirements of the Ordinance.
3. The exterior of the second floor shall be constructed substantially in compliance with the plans submitted June 19, 2009. If any changes are made to the plans submitted with this application, the revised plans must be submitted to the Planning and Zoning Division staff prior to the issuance of a Zoning Permit. The Planning and Zoning Division staff shall ensure that the proposed plans are substantially in compliance with the plans submitted with this application.

4. The proposed addition shall be no closer to the side lot lines than the existing residence, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the addition must be located so that the outer edges of the overhangs conform with the offset requirements.
5. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing the location of all of the structures on the property, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The survey should identify the total lot size.
6. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed addition and remodeling, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value will allow the petitioner to be able to remodel the interior of the residence and to reconfigure the second floor of the residence. The proposed reconfiguration, with the removal of the screen porch, will result in no overall increase in the amount of square footage on the property. As proposed, the screen porch on the lakeside of the residence will be removed and only an uncovered deck will remain. This will reduce the bulk of the lakeside of the structure. The proposed reconfigured second floor will be set back from the lakeside of the residence and will be located no closer to the side lot lines than the existing residence.

A previous owner was granted variances in 1992 to significantly expand the cottage that previously existing on the property. The Board, at the time, stated that the approval of the variances would result in a reasonable use of the non-conforming lot. The reconfiguration of the second floor as proposed herein, will not increase the total square footage on the lot. This will be in keeping with the characteristic of the neighborhood and should not adversely affect the public health and welfare.

It should be noted that the residence conforms to the road, shore, and floodplain setback requirements of the Ordinance. It is a very narrow lot with a narrow residence that has been substantially added on to in the past. To require that no remodeling or updates occur to the residence because it is located too close to the side lot lines would be unreasonably burdensome on the property owner. If the offset requirements of the Ordinance were strictly imposed, a new structure could be constructed on the property that is only 13 ft. wide. This would not provide a reasonable use of the property. Therefore, the staff feels that the residence is appropriately located on the lot and should be allowed to be remodeled and reconfigured as proposed herein with no increase in the total floor area on the property. Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

None.

**ADJOURNMENT:**

Mr. Day *I make a motion to adjourn this meeting at 8:35 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Nancy M. Bonniwell  
Secretary, Board of Adjustment